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[fol. 1] **IN SUPREME COURT OF PENNSYLVANIA**

MISCELLANEOUS DOCKET No. 9

No. 152

COMMONWEALTH OF PENNSYLVANIA ex rel. EDWARD GIBBS

vs.

C. J. BURKE, Warden, Eastern State Penitentiary

DOCKET ENTRIES

May 24, 1948, Petition for writ of habeas corpus filed.
Edward Gibbs.

ORDER

June 21, 1948, a rule is hereby directed to issue against C. J. Burke, Warden, Eastern State Penitentiary, and the District Attorney of Delaware County, calling upon them, or either of them, to show cause why the prayer of the within petition should not be granted; rule returnable June 3, 1948.
By the Court, Stearne, J.

June 24, 1948, Warden's Answer filed.
June 29, 1948, Acceptance of service of rule by the District Attorney filed.
July 2, 1948, District Attorney's Answer with
Transcript No. 149 Sept. Sessions, 1947
Bill of Indictment No. 417 September Sessions, 1947
Certificate of Clerk etc.
Notes of Testimony,
filed.

ORDER

July 6, 1948. Writ denied.
Per Curiam.

July 9, 1948. Record exit and sent to District Attorney, Delaware County.
[fol. 2] July 9, 1948. Acknowledgment received and filed.
November 18, 1948, the following order has been received from the Clerk of the Supreme Court of the United States

on petition for writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania:

"On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 418.

November 15, 1948."

[fol. 3] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed May 24, 1948

To the Honorable, the Chief Justice and associate Justices of the said court:

The Petitioner of namely Edward Gibbs, Relator in the above named actions respectfully represents:

1. That the said Edward is now an inmate of the Eastern State Penitentiary, Graterford, Montgomery County, Pennsylvania.

2. That on the 17th day of July, 1947. He was arrested and presented before the Honorable John McCaffery, Esq., a Justice of the Peace in the borough of Marcus Hook, Delaware County, Pennsylvania, upon a warrent sworn duely to by one James Blades of 708 Market Street, in the borough of Marcus Hook, Delaware County, Pennsylvania. Accusing said Edward Gibbs with the crime of larceny and receiving stolen property.

[fol. 4] 3. That on the 17th day of July, 1947. At a hearing before the aforementioned Justice of the Peace, he Edward Gibbs entered a plea of not guilty to the aforesaid charges, and was committed to the Delaware County Prison at Thornton, Delaware County, Pennsylvania in default of Five Hundred Dollars Bail.

4. That on September 30th, 1947. He Edward Gibbs was presented to the Court of Common Pleas 32nd, Judicial

District of Pennsylvania, in the city of Media, Delaware County, Pennsylvania.

5. That on September 30th, 1947 he Edward Gibbs entered a Plea of not guilty to Indictment Number 417 September Session, to the charge of larceny and receiving stolen property.

6. That he Edward was denied counsel and through ig-orance of law and fact was forced to act as his own counsel.

7. That on September 30th, 1947 He Edward Gibbs was found guilty by the Jury on the count of larceny, and was sentenced to a term of two and one half years to five years, in the Eastern State Pen-tentiary, Philadelphia, at which institution he is now an inmate.

8. That he Edward Gibbs was denied his constitutional Rights as set forth in the Ten Or-ginial Ammendsments, Article VI.

8-A. That he the said Edward Gibbs is now being detained il-egally in the Eastern State Pen-tentiary Philadelphia, Pennsylvania.

[fol. 5] 9. That the Honorable Justice Harold L. Ervins 'Erred' when he pointed out to the jury that he your Relator was not represented by counsel, which he thought was perfectly legal in the State of Pennsylvania.

Wherefore, Your Petitioner prays that allowances of a Writ of Habeas Corpus from your Honorable Court be granted, and that Edward Gibbs be brought before your Honorable Court for further consideration on the charge against him.

And he will ever pray,

(Signed) Edward J. Gibbs.

Duly sworn to by Edward J. Gibbs. Jurat omitted in printing.

[fol. 6] COURT OF COMMON PLEAS 38TH JUDICIAL DISTRICT OF PENNSYLVANIA, MONTGOMERY CO.

Chambers of George C. Corson, Judge

Norristown, Pa., February 26, 1948.

Edward Gibbs, D-9954,
Box 244,
Graterford, Penna.

DEAR SIR:

Your registered envelope containing the enclosed petition for Writ of Habeas Corpus, was received by Judge Knight and turned over to me for action.

We are returning it to you, first, because the prothonotary required costs in the amount of, I believe $3.50 for filing, and, second, because I feel it would be a waste of money for you to pay the costs to have this petition filed.

Assuming that the facts as set forth are correct, you are at present in the Penitentiary as a result of a commitment from the Delaware County court. While your physical presence in Montgomery County might give us jurisdiction to issue the Writ, yet the only thing that would happen would be that the Warden would present his commitment and we would not be able to go behind the commitment for any reason except possibly lack of jurisdiction in the Delaware County Court. Since your petition shows this court to have jurisdiction, the Writ would have to be dismissed. If you wish to raise the question set forth in paragraph 9 of your petition, I would suggest that you petition the Superior Court which has state wide appellate jurisdiction. However, if you insist upon having the Writ heard in this county, if you will forward the petition and sufficient money to pay for filing, we will consider at that time whether or not there is sufficient — set forth to warrent the issurance of the Writ.

Very sincerely yours, (S.) George C. Corson

ENDORSEMENT

No. 152 Miscl. Docket No. 9 M.P. 1476 Commonwealth of Pennsylvania ex rel Edward Gibbs vs. C. J. Burke, Warden Eastern State Penitentiary. Petition for Writ of Habeas Corpus *Order* June 21, 1948, a rule is hereby directed to

issue against C. J. Burke, Warden, Eastern State Penitentiary, and the District Attorney of Delaware County, calling upon them, or either of them to show cause why the prayer of the within petition should not be granted; rule returnable July 3, 1948. By the Court, Stearne, J. Filed in Supreme Court May 24, 1948. Philadelphia—Order—July 6, 1948, Writ denied. Per curiam.

[fols. 7-8] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

ANSWER OF C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY—Filed June 24, 1948

To the Honorable, the Judges of the Superior Court:

C. J. Burke, Warden, Eastern State Penitentiary, Philadelphia, Pa., respectfully represents:

That Edward Gibbs pleaded guilty to Bill of Indictment No. 417, September Term, 1947, Delaware County, Pa., to the surcharge of Larceny, and was sentenced by the Hon. Harold L. Erwin on the 30th day of September, 1947 to undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania for a period of not less than two and one-half (2½) years nor more than five (5) years to be computed from July 17, 1947. Minimum expires on January 17, 1950, and the maximum expires on July 17, 1952.

I am attaching photostatic copies of both commitments.

Respectfully, (S.) C. J. Burke, Warden

Duly sworn to by C. J. Burke. Jurat omitted in printing.

[fol. 9] Court of Oyer and Terminer, General Jail Delivery, and Quarter Sessions of the Peace, for the County of Delaware, September Term, 1947

No. 417

The Commonwealth of Pennsylvania,

vs.

Edward Gibbs

Sur Charge of Larceny.

Sep. 30, 1947 Defendant Pleaded Guilty.

I Certify, That on the 30th day of September, A. D. 1947 the above-named defendant is adjudged by the Court to pay a fine of Ten Dollars to the commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania, for a period of not less than Two and one-half years nor more than Five years to be computed from July 17, 1947, to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution, and stand committed until judgment be fully complied with.

In witness whereof, I have hereunto set my hand and Seal of said Court, this 30th day of Sept. A. D. 1947.

(S.) John Rickerts, Pro. Clerk

[File endorsement omitted.]

[fol. 10] In the Supreme Court of Pennsylvania

[Title omitted]

Answer to Petition for Writ of Habeas Corpus—Filed July 2, 1948

To the Honorable, the Chief Justice and Associate Justices of the Said Court:

The Answer of the Commonwealth to the Petition for Writ of Habeas Corpus by the above-named Relator, Edward Gibbs, respectfully represents:

1. Admitted.
2. Admitted.

3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. It is denied that he, Edward Gibbs, was denied counsel and through ignorance of law and fact was forced to act as his own counsel. On the contrary, it is averred that he appeared and acted as his own counsel, conducted his defense, cross-examined the Commonwealth's witnesses and fully acted as his own counsel.
7. Admitted.

[fol. 11] 8. By way of answer it is averred that the record discloses the relator was arrested on July 17, 1947, and immediately thereafter a transcript of the hearing before the Justice of the Peace was returned to the Clerk of Courts of Delaware County on the 22nd day of July 1947. A bill of indictment was presented to the September Sessions of the Grand Jury inquiring for the County of Delaware on September 16, 1947 and a true bill was found on said date. The relator was thereafter called for trial on September 30, 1947. The transcript of the notes of testimony taken in the matter does not disclose that the relator demanded counsel nor requested that counsel be appointed to represent him. The notes of testimony in the record of the case disclose that the relator cross-examined each witness for the Commonwealth and presented a defense on his own behalf to the charges involved which in brief were that the relator entered the room of James Norris Blades on the 17th day of July 1947 and removed therefrom a wrist watch of the value of twenty dollars, clothing of the value of fifty-four dollars and fifty cents, a camera valued at twelve dollars, a radio valued at thirty dollars, a suitcase, and seaman's papers. At the time of his arrest the relator was wearing some of the prosecutor's clothing, and the wallet of the prosecutor was found in the jail cell in which he, the relator, had been lodged on his arrest and in his cross-examination of the witnesses he disclosed that the wallet had been placed therein by himself but not hidden. The relator was seen to enter the room of James Norris Blades, whom he knew well, by the mother of the victim. The record discloses that the relator was arrested the same [fol. 12] day that the larceny occurred. Witnesses also identified the relator as having pawned the radio and offering an additional portion of the goods which had been

taken. The relator was found guilty of the charge of larceny and sentence followed in due course. By way of further answer it is averred that the relator herein is undertaking to substitute a Writ of Habeas Corpus for an appeal. The issues here presented by the relator were before your Honorable Court in the matter of *Comth. ex rel. Uveges, v. Ashe, Warden,* and the opinion therein rendered, *161 Pa. Superior Ct. P. 58,* clearly holds that the Petition for Writ of Habeas Corpus cannot be made a substitute for appeal; that he was not denied his constitutional rights under the averments as set forth in his petition for said writ.

It is also averred by way of answer that the relator's examination of witnesses and questions asked during the course of the trial fully disclosed his familiarity with legal process in the criminal courts. At the time of sentence and after the verdict was returned the criminal record of this relator was brought to the attention of the Court. This criminal record is attached hereto, made a part hereof and marked Exhibit "A".

8-A. It is admitted that Edward Gibbs, the relator is being detained in the Eastern State Penitentiary pursuant to sentence imposed by the Hon. Harold L. Ervin, Judge of the Court of Oyer and Terminer and General Jail Delivery and Court of Quarter Sessions of the Peace of Delaware County, Pennsylvania. On September 30, 1947, the following sentence was given the accused:

> "And now to wit 9/30/47 the within named defendant is sentenced by the Court as follows, 'Pay a fine of $10, undergo imprisonment in the Eastern State Penitentiary at separate and solitary confinement for a period of 5 years Maximum and 2½ years Minimum. Sentence to date from commitment July 17, 1947 and stand committed until this sentence be complied with'."

[fol. 13] It is denied that he is illegally detained therein.

Wherefore, it is prayed that the Petition for Writ of Habeas Corpus be dismissed and the relator remanded to the Eastern State Penitentiary for the completion of sentence imposed as set forth above.

Respectfully submitted, (Signed) Karl W. Johnson, First Assistant District Attorney; (Signed) C. Wm. Kraft, District Attorney.

[fol. 14] *Duly sworn to by Karl W. Johnson. Jurat omitted in printing.*

[fol. 15] EXHIBIT "A" TO ANSWER

Report of Probation Officer

Commonwealth vs. Edward John Gibbs, No. — Sessions, 194-.

Alias —— ——.

Address: 1360 Market St., Linwood, Pa.

Age, 34. Birthday, 8-10-12. Color, white. Nationality, American. Height 5-9¼. Weight, 248. Where born, Linwood, Pa. Married, single. Family, Mother, 2 bros., 2 sis.

Employment: Rigger—General Chemical Co. Earnings: $54. per wk.

Arrested —— — 194- in Marcus Hook, Pa.

Arrested by —— — —.

Arrested with —— — —.

Charged with Larceny (clothing, radio, etc.)

Committed July 18, 1947 by ——.

Prosecutor, —— ——. Address, —— ——.

In Jail ——. Bail ——. Surety ——.

Tried —— — 194- before —— —— Judge.

Convicted: Plead Guilty.

Sentenced —— — 194- to pay fine of $——, costs and ——.

Minimum Sentence Expires —— — ——.

Fine $——. Paid —— ——. Costs $—— Paid —— ——.

Defendant has no disease and his conduct has been satisfactory except